I N T H E P R O V I N C E O F

B R I T I S H C O L U M B I A

ROYAL COMMISSION OF INQUIRY

INTO THE ALLEGED IMPROPER TREATMENT OF

ROBERT AND FRANCINE FULLERTON

BY MEMBERS OF THE MATSQUI POLICE DEPARTMENT

ON OR ABOUT JULY 15, 1985

COMMISSIONERS' REPORT
MAY 29, 1990

J. DAVID N. EDGAR

MARY E. SAUNDERS, Q.C.

AUDREY L. MOORE

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May 29, 1990

TO HIS HONOUR THE LIEUTENANT-GOVERNOR IN COUNCIL

MAY IT PLEASE YOUR HONOUR

We, the undersigned, were appointed under Your Honour's Order in Council Number 118, approved February 2, 1989, to inquire into the alleged improper treatment of Robert and Francine Fullerton by members of the Matsqui Police Department, on or about July 15, 1985.

We have the honour to submit our report on our findings.

All of which is respectfully submitted,

"J. DAVID N. EDGAR"

J. David N. Edgar, Commissioner

"MARY E. SAUNDERS, Q.C."

Mary E. Saunders, Q.C. Commissioner

"AUDREY L. MOORE"

Audrey L. Moore, Commissioner

EXECUTIVE SUMMARY

On February 2, 1989 this Commission of Inquiry was appointed to inquire into and report on all matters associated with alleged improper treatment of Robert or Francine Fullerton by members of the Matsqui Police Department, on or about July 15, 1985 beginning at a local gravel pit and continuing at the Matsqui Police Station, and upon the internal police inquiry, investigations and hearings following complaint by Robert and Francine Fullerton.

A copy of the Order in Council appointing this Commission of Inquiry is attached to this report as Schedule "A".

Between the time the Commission of Inquiry was established and the time that this inquiry began hearings, Mr. and Mrs. Fullertons' civil action claiming damages for assault by members of the Matsqui Police Department came to trial. The jury verdict dismissing the action was rendered on May 4th, 1989. Subsequent to the verdict, this Commission noted that there remained part of the Commission's mandate that had not been fully canvassed during the civil trial, specifically the process used by the Matsqui Police Department in exploring and investigating the Fullertons' allegations and complaints and disposing of them.

This report outlines the basic facts which led to and flowed from the complaints of Mr. and Mrs. Fullerton, the investigative procedures followed by the Matsqui Police Department and its consideration of the complaints.

We make a number of observations, including comments on the legislative process in effect when these complaints arose and how that process has recently changed, the role of Crown Counsel when dealing with complaints against police officers, the general process within the Matsqui Police Department for handling citizen's complaints and the application of the "frivolous and vexation" provisions of the Police Act.

We also comment critically on the role of Matsqui Deputy Chief Constable Vander Hoek in handling the Fullertons' complaints and we suggest his actions be reviewed by the appropriate disciplinary authority within the Matsqui Police Department.

We conclude that there were two fundamental procedural errors in Matsqui Police Department's handling of the complaints. The first occurred when the Deputy Chief Constable ordered prematurely the stoppage of the criminal investigation of the allegations of Mr. and Mrs. Fullerton of assault by certain members of the Matsqui Police Department. The second

occurred when the Matsqui Police Department failed to recognize the distinction between Mr. and Mrs. Fullertons' allegations of criminal assault at the gravel pit and their broader citizens' complaints against the Service.

We further conclude that considering all the proceedings and reviews that have centered on the complaints of Mr. and Mrs. Fullerton about the events in Matsqui on June 15th, 1985, no further consideration of the complaints and the allegations is warranted.

Lastly, we are of the view that the circumstances of this case do not warrant a recommendation for compensation of Mr. and Mrs. Fullerton in consideration of their time, effort and expense in pursuing their complaints.

PART 1

BACKGROUND

1.1 THE COMPLAINT

On February 2, 1989 this Commission of Inquiry was appointed to inquire into and report on all matters associated with alleged improper treatment of Robert or Francine Fullerton by members of the Matsqui Police Department, on or about July 15, 1985 beginning at a local gravel pit and continuing at the Matsqui Police Station; and upon the internal policy inquiry, investigations and hearings following complaint by Robert and Francine Fullerton.

This appointment followed upon a long and determined effort by Robert and Francine Fullerton to have a full inquiry into the events at the gravel pit and the subsequent conduct of the Matsqui Police Department in investigating their allegations.

The events commenced in the late afternoon of July 15, 1985 when constables, all members of the Matsqui Police Department, responded to a call and attended at a gravel pit where they found Mr. and Mrs. Fullerton. Mr. Fullerton had fallen on a sloped path with resultant injury to his leg.

His wife, Francine Fullerton, was with him. The events which followed led to the arrest of Robert and Francine Fullerton for being in a state of intoxication in a public place, their release from the Matsqui Police Department jail, Mr. Fullerton's subsequent admission to hospital and medical treatment for his leg, his subsequent verbal complaints about his treatment by members of the Matsqui Police Department, the investigation of that complaint and the decision taken not to charge members of the Matsqui Police Department with criminal offenses against Mr. and Mrs. Fullerton, Mr. Fullerton's subsequent written complaint under the Police Act and disposition of the complaint initially by the Chief Constable of the Matsqui Police Department and thereafter by a Review Panel of the Matsqui Police Board, Mr. Fullerton's subsequent attempts to lay a private prosecution against members of the Matsqui Police Department, a further investigation into the matter by Crown Counsel, Mr. Fullerton's prosecution of a civil action against members of the Matsqui Police Department for damages for assault, a subsequent internal investigation by the B.C. Police Commission and lastly an investigation and report by the Ombudsman.

In his report, the Ombudsman observed that the decision of the Chief Constable of the Matsqui Police Department and the Review Panel of the Matsqui Police Board was made in the absence of a statement by a witness to events in the jail and

without reference to certain photographs of Francine Fullerton. The Ombudsman recommended that a full public inquiry into the events surrounding Mr. Fullerton's allegations be conducted. It was pursuant to this recommendation that this Royal Commission of Inquiry was established.

Between the time of the Ombudsman's recommendations, February 2, 1989, and the date we commenced the inquiry Mr. and Mrs. Fullertons' civil suit came to trial. After a three week trial before a judge and jury a verdict was found against Mr. and Mrs. Fullerton. It is the view of this Commission of Inquiry that the results of the jury trial are determinative of the factual issues surrounding the events in the gravel pit and allegations of assault in the jail, and we accept the jury's finding that the assaults which were alleged by the Fullertons and which formed the basis of their civil suit, did not occur.

The jury verdict was rendered on May 4, 1989. On May 26, 1989 this Commission ruled that as a result of the information available to the Commission and considering the results of the jury verdict it would serve no useful public purpose nor any legitimate interests of Mr. and Mrs. Fullerton to rehear all or any of the evidence presented at the jury trial that relates to that part of the Commission's mandate to inquire

into the events and the allegations of Robert and Francine Fullerton of assault.

The Commission further ruled that there remained as part of the mandate of the Commission those aspects which were not fully canvassed during the civil trial, particularly the internal police investigations and hearings of the complaint under the Police Act. On July 11, 1989 the scope of the inquiry was agreed by all participants to the hearing to be the investigations, legal proceedings and other inquiries which took place as a consequence of the Fullertons' complaints up to the decision of the Matsqui Police Board on October 22, 1985.

For these reasons this Commission of Inquiry has inquired specifically into the process, that is the conduct of the Matsqui Police Department in exploring and investigating the Fullertons' allegations and complaints, and disposing of them.

1.2 THE PROCESS

It is clear that on July 16, 1985 Robert Fullerton was admitted to hospital for damage to his knee and that he endured medical treatment for it. While in hospital he telephoned the Matsqui Police Department, complaining that he was assaulted by members of the Matsqui Police on July 15, 1985. To whom Mr. Fullerton spoke is unclear. It is clear from the evidence before us that the Deputy Chief was on annual leave at the time of the call. Mr. Fullerton spoke either to Chief Constable Stewart, who passed that message on to others in his department, or he spoke directly to Staff Sergeant Deane. In any case, Staff Sergeant Deane became aware of the information and passed it on to Sergeant Stuckel. Sergeant Stuckel asked Corporal Gustafson to investigate the matter of Mr. Fullerton's call. Mr. Fullerton's call was not recorded as a complaint under the Police Act or the Police Discipline Regulations at this time. From subsequent events, it appears his call was initially treated as a matter to be investigated as a possible crime under the Criminal Code.

In accordance with his instructions, Corporal Gustafson obtained the file. He testified that he believed the file contained the occurrence report concerning the gravel pit of July 15, 1985, and booking sheets from the jail. Corporal Gustafson proceeded to the M.S.A. Hospital at approximately

11:50 a.m. July 19, 1985 and there took a statement from Mr. Fullerton. In his first statement Mr. Fullerton alleged that he and his wife had been assaulted by members of the Matsqui Police Department at the gravel pit, handled roughly in the jail, denied medical attention and denied a breathalyzer. Corporal Gustafson returned to the station, discussed the matter with Sergeant Stuckel as to whether it should be proceeded with as a complaint under the Police Act or as a normal criminal investigation. He was advised to proceed by way of criminal investigation. Corporal Gustafson then returned to the hospital, re-interviewed Mr. Fullerton and explained the investigation procedure to him. During this interview, Mr. Fullerton advised Corporal Gustafson that he wished the matter to be dealt with as a criminal matter, that is, he wished to lay a complaint of assault. Mr. Fullerton was angry and upset.

Corporal Gustafson proceeded with his investigation. On July 20th he re-interviewed Mrs. Fullerton at home and took pictures of Mrs. Fullerton's regularly spaced bruises on the back of her legs. He made notes that he had taken photos. He gave Mr. Fullerton a statement form to complete. On the July 21st, 1985 Corporal Gustafson took a statement from Marshan Kemshaw (Grue) and visited the gravel pit with her. Corporal Gustafson asked her if she had been counselled by the Fullertons on saying anything and she indicated she

thought the answer would incriminate her. Corporal Gustafson concluded she may have been holding back information and had in mind talking to her again. Between the July 21 and July 30 Corporal Gustafson interviewed nine other people, as well as giving the constables concerned the opportunity to make a statement.

On July 30th, 1985 Corporal Gustafson was ordered by Sergeant Stuckel to discontinue the investigation. He was ordered to place all of his statements and the residue of the file in a brown envelope and place it on Deputy Chief Vander Hoek's desk. Corporal Gustafson was sufficiently upset with the order that he asked Sergeant Stuckel to sign his notebook evidencing the order to discontinue the investigation. Corporal Gustafson testified that had he continued the investigation he would have re-interviewed the witness Marshan Kemshaw (Grue) who indicated that she may have been counselled by the Fullertons not to give a full or accurate statement, and that he intended to inquire as to whether persons were present in the jail who may have witnessed some of the events that occurred after the Fullertons were taken into the Matsqui Police Department jail July 15, 1985. Further, Corporal Gustafson had taken pictures of Francine Fullerton. The pictures were not developed at the time Corporal Gustafson handed over his file. It was never made

clear to us in this inquiry as to when those photographs became available to persons reviewing the file.

Deputy Chief Vander Hoek was absent on annual leave when the call from the Fullertons first came in. We now know that Deputy Chief Vander Hoek returned to work on July 22, 1985. On July 26, 1985 Corporal Gustafson delivered a letter to the Deputy Chief from Mr. Fullertons' lawyer and the Deputy Chief indicated frustration with the situation. Although Deputy Chief Vander Hoek denied that he had ordered the investigation to stop, the weight of the evidence from Sergeant Stuckel and Corporal Gustafson, the notes from Corporal Gustafson's notebook and their recollection of the events is preferred by this Commission of Inquiry over the Deputy Chief's evidence in that aspect. It is our conclusion that Deputy Chief Vander Hoek directed the investigation to cease.

In any case, whether Deputy Chief Vander Hoek ordered the investigation to cease or whether he stopped it in order to review it and reassign it, the result is that because of the order to Corporal Gustafson to hand over the file, no further investigation was done on the Fullertons' allegations.

A summary of the investigation was compiled by Sergeant Stadnyk at the request of the Deputy Chief. While there was criticism by Mr. Fullerton against Sergeant Stadnyk performing

this function, we conclude that the report is an objective summary of all the statements taken by Corporal Gustafson in his investigation.

This summary was eventually forwarded to Crown Counsel by the Deputy Chief, instead of the usual procedure of forwarding a Report to Crown Counsel. The purpose of the abbreviated route of an informal report was to determine whether a Report to Crown Counsel should be completed or whether further formal action should be taken. Crown Counsel reviewed the summary and based on it concluded that criminal charges should not be laid against the members of the Matsqui Police Department who were alleged by Robert and Francine Fullerton to have assaulted them.

Mr. Fullerton was advised that no charges would be laid against him, or any other person arising from the events in the gravel pit. Thereafter, Mr. Fullerton on September 19, 1985 wrote to the Chief Constable requesting an inquiry by the Matsqui Police Board. It is clear that at least at this time Mr. Fullerton's allegations were dealt with as a complaint under the Police Act.

On September 30, 1985 Chief Constable Stewart issued a decision under Section 39.1(2)(a) of the B.C. Police Act, as it then was, which advised Mr. Fullerton that he was refusing

to investigate Mr. Fullerton's complaint on the basis that it was vexatious and not made in good faith and did not warrant an investigation.

It is clear that Mr. Fullerton's letter of September 19, 1985 was considered only to be a complaint that members of the Matsqui Police Department had assaulted Mr. and Mrs. Fullerton at the gravel pit and it did not consider issues raised previously by Mr. Fullerton in the statements given to Corporal Gustafson that he had been denied medical service while at the jail, that he had been assaulted in the jail, that he had been denied access to counsel and that he had been refused a breathalyzer.

At the time Chief Constable Stewart advised Mr. Fullerton that the complaint would not be investigated further Section 39.1(2)(a) of the B.C. Police Act was relatively new, having been proclaimed into force only July 11, 1985. This was the first use of this section by the Chief Constable or the Matsqui Police Board after its proclamation.

Mr. Fullerton complained of the refusal to investigate and asked that a Review Panel review the Chief Constable's decision. This it did on October 16, 1985 and a notice was sent to all parties October 22, 1985 advising that the Chief Constable's decision was accepted by the Review Panel. The

Review Panel had before it Sergeant Stadnyk's summary, and probably the investigation file including the statements of the various witnesses. It is unlikely that it had the photographs or that it was advised that Corporal Gustafson's investigation had been abbreviated. They also relied upon an understanding that the matter had been reviewed by senior Crown Counsel who had decided not to proceed with charges against the officers. Mr. Fullerton had expected a chance to meet the Review Panel but no such meeting was required by the then Police Act and no meeting was held.

Mr. Fullerton was not prepared to take the answer of the Review Panel as final and pursued his complaint through the civil courts and other review bodies as we have earlier described.

PART 2

OBSERVATIONS

2.1 LEGISLATIVE FRAMEWORK 1985

In 1985 the Police Act provided that a citizen having a complaint against a constable could complain to the disciplinary authority (the Chief Constable) who, upon receiving a complaint would informally hear and attempt to resolve the complaint. Where the authority was unable to resolve the matter the complainant could submit the complaint in writing to the appropriate disciplinary authority. Upon receiving a written complaint the disciplinary authority was charged with the task of promptly causing the complaint to be investigated and not more than 7 days after the investigation, to send notice to the complainant and the municipal constables against whom the complaint was made.

Notwithstanding this obligation to investigate, Section 39.1 permitted a disciplinary authority to refuse to investigate a complaint against a constable where the disciplinary authority was satisfied, amongst other things, that the complaint was vexatious or not made in good faith. As we have earlier indicated, this section of the Police Act became effective July 11, 1985.

Thus, the scheme of the old Police Act contemplated that oral complaints could be made, that informal resolution would be tried and that the citizen could press the matter on to investigation and, barring disposition under Section 39.1, eventually to a public inquiry. The formal process was initiated by the citizen setting the complaint out in writing.

In the context of the Police Act in July, 1985 it is clear that the initial phone calls by Mr. Fullerton to the Matsqui Police Department did not require a formal investigation under the Police Act to be initiated. It was, and is, consistent with good police practice that those allegations, being of assault, would be investigated in accordance with criminal investigation standards including advising witnesses and, in particular, the constables, of their rights under the Charter of Rights and Freedoms.

However, it is our view that upon receiving the written statements signed by Mr. and Mrs. Fullerton provided by them to the assigned investigator, the complaint process was triggered although this was not recognized by the Matsqui Police Department at that time.

It is the view of this Commission of Inquiry that the investigation by Corporal Gustafson was not diminished

because it was conducted as a criminal investigation. In fact, the Police Discipline Regulation requires that statements be taken first under the criminal investigation, where there is the possibility of an investigation under both the Criminal Code and the disciplinary provisions of the Discipline Regulation.

The effect of the failure to regard these written statements as complaints was shown when the September 19 letter came in. Upon receipt of the letter no apparent effort was made to review the elements of the complaint - were there any other elements besides complaint of assault. Mr. Fullerton had earlier complained of denial of counsel and denial of adequate medical service, as well as assault in the jail by the members of the Matsqui Police Department. These three latter aspects of his allegations allowed Mr. Fullerton in subsequent months to focus upon the supposed wrongs which occurred to him in the jail and gave life to his longstanding grievances. It is speculation whether the witness who had been a prisoner in the jail on the evening in question would have been discovered had the Matsqui Police Department identified as one of the elements of Mr. Fullerton's complaint the alleged roughing up in jail. However, bearing in mind the thoroughness of Corporal Gustafson's investigation until it was terminated, it is at least likely that the identity of this witness would have been discovered earlier and a statement

taken in a more timely way had all the elements of the complaint been assessed.

2.2 THE POLICE ACT, 1989

In July, 1989 a new Police Act was proclaimed into force. It provides a revised complaint procedure in which a citizen alleging facts, which if proved would establish a disciplinary default under the Discipline Regulation, may complain in writing to the disciplinary authority. Upon receipt of writing setting out the complaint, a form is required to be sent to the complainant with a copy to the Complaint Commissioner of the B.C. Police Commission, and at periodic intervals thereafter a reporting must be provided to both the complainant, the officers involved and the Complaint Commissioner.

The review procedure before the Police Board has been enhanced from the previous Police Act in that the Review Panel now, if it is to unanimously confirm the decision of the disciplinary authority, must provide the complainant with an opportunity to be heard. Reasons for the decision must be provided in writing to the complainant.

2.3 ROLE OF CROWN COUNSEL

The role of the administrative Crown Counsel for the Matsqui area, Mr. Greg Barnett, was criticized before us in the hearings. It was he, who at the request of Deputy Chief Constable Vander Hoek, considered whether criminal charges should proceed against the four Matsqui police officers. While having (though not knowing it) a flawed police file before him and involving himself in something other than the usual process there was nothing improper or unprofessional in his conduct. In fact, in our observation, he discharged his duties fairly and objectively.

The role of the office of Crown Counsel in reviewing allegations of criminal conduct made against police officers is most important. For some, it is an extra layer of insurance which can balance any perception of lack of objectivity when police officers are required to investigate charges against their police officers. On the other hand, the local Crown Counsel, who of necessity works closely with local police, may be viewed by some as in a conflict situation in reviewing allegations against police officers. A policy to deal with these perceptions was put into place in 1987 by the Criminal Justice Branch of the Ministry of Attorney General. Under this policy, a central legal agency within the Criminal

Justice Branch reviews every file involving a complaint of criminal activity against a police officer and decides whether or not criminal charges will proceed. If in reaching this decision there is disagreement between regional Crown Counsel and the central agency, the matter is referred to the Assistant Deputy Minister, Criminal Justice Branch, for resolution.

We understand this policy has worked well since its inception. As well as insuring consistency of charging practices throughout the Province in such situations, the policy is an important step in maximizing public confidence in the administration of criminal justice.

2.4 CITIZEN COMPLAINT PROCEDURES and MATSQUI POLICE DEPARTMENT INITIATIVES

This case arose in 1985 when, as noted elsewhere, the legal provisions and procedures for the handling of citizens' complaints were different than now exist. A new Police Act was proclaimed on July 1st, 1989 and the characteristics of this, insofar as citizens' complaints are concerned, are briefly set out in section 2.2 of this part.

It is our view that had these new provisions been in place in 1985, particularly the office of Complaints Commissioner, the frustrations of Mr. and Mrs. Fullerton and the Matsqui Police Department might well have been avoided. In particular, the new provisions provide that on an appeal from a decision by a chief constable that a complaint is vexatious or not made in good faith, the citizen is now given an opportunity to be heard if the appeal panel of the local police board wishes to confirm the Chief's decision. It was this lack of such an opportunity that gave the Ombudsman concern when considering the Fullertons' complaints.

But we also think it is important to point out that the Matsqui Police Department has not stood still in its own internal procedures of handling citizens' complaints. From

the evidence before us at our hearings, we note that a new and carefully documented policy has been established for handling citizens' complaints. This policy not only reinforces the new provisions of the Police Act, but includes a step by step instruction format for those shift commanders, disciplinary authorities and investigating officers that become involved in the consideration of citizens' complaints. It includes a check list of the process to be followed and the dates when each step has been completed. Further, a recent "follow-up" inspection of the Matsqui Police Department by the B.C. Police Commission found that procedures for handling citizens' complaints were up-to-date and in conformity with the law, files were complete and well documented and the overall handling of such complaints is being done in "a prompt and efficient manner".

We applaud the Matsqui Police Department for taking these steps and we think it is fair to note that this is perhaps one of the by-products of the Fullertons' persistence in this matter.

We have included the extract from the Matsqui Police Department policy and guidelines on the handling of citizens' complaints as the public is entitled to know that these procedures are in place and are being followed. These provisions appear as Schedule "B" of this report.

2.5 INTERPRETING THE "FRIVOLOUS AND VEXATIOUS" PROVISIONS OF THE POLICE ACT

Section 58 of the new Police Act provides that a disciplinary authority (in the Fullerton situation the Chief Constable or his appointee) may refuse to investigate a citizen's complaint in certain circumstances, including when he is satisfied that the complaint "is frivolous, vexatious, not made in good faith or concerns a trivial matter". A similar provision in the old Police Act in force when the Fullertons' complaints arose was relied upon by the Matsqui Chief Constable to reject the complaints.

As mentioned earlier in this report, the provision was very new in 1985 and the Matsqui Chief Constable had no precedent to fall back on or any direction or advice on how to apply the provisions. The view has been expressed to this Commission (and, indeed, reflected in an earlier report of the B.C. Police Commission) that the provisions should not have been applied in respect of the Fullertons' complaints because of their serious nature.

This Commission voices no substantial criticism of the Chief Constable's use of the provisions in this case.

Hindsight is always clearer. We know now that had the complete procedures been followed, time, expense and frustration might have been avoided. However, the Chief Constable made his judgement call as he was lawfully authorized to do. His judgement was sustained by the panel of the Matsqui Police Board and the substance of the Fullertons' complaints has been subsequently rejected by a number of review authorities, including a jury of the Supreme Court of British Columbia.

Yet the words quoted above from the Act remain difficult to apply. The provision is seldom used within municipal police forces in British Columbia and we think this is good. We think the provision should not be applied unless the circumstances are clear and the conclusion obvious.

When it is applied, it may be useful to have guidance on the meaning of these works and the circumstances in which they may be applied. To this end, we attach as Schedule "C" to this report "Guidelines for the Application of Section 58 (1) of the Police Act". These are not exhaustive and as this Commission does not purport to be a court, they are not binding. Further, the disciplinary authority or citizen who requires assistance in considering these provisions may seek the advice of the Complaints Commissioner appointed under the Police Act.

2.6 THE ROLE OF DEPUTY CHIEF CONSTABLE VENDER HOEK

The role of Deputy Chief Vander Hoek in the consideration of the Fullertons' complaints was significant. It was the object of substantial comment before us. We are critical of Deputy Chief Vander Hoek in three areas.

Firstly, during the course of our hearings it was established that Deputy Chief Vander Hoek's responsibilities included directing and investigating complaints concerning the Matsqui Police Department. Yet he ordered the investigation of the Fullertons' complaints to cease and thus the Matsqui Police Chief, Crown Counsel, the Matsqui Police Board and all other jurisdictions that reviewed this matter were initially dealing with incomplete facts while arriving at their decisions.

To state this differently, and in the words of Mr. Sorochan, counsel to this Commission, "professional gathering of facts is very important and to interfere with the process of gathering all the facts is dangerous". Deputy Chief Vander Hoek stated to the Commission that he did not believe Mr. Fullerton and he therefore stopped the investigation. This Commission thinks that this was an inappropriate decision for him to make.

It is significant that Mr. Conroy, counsel for Mr. Fullerton; Mr. Harris, counsel for the Matsqui Police Department; and Mr. Sorochan all stated in their submissions that inappropriate actions were followed in this investigation, and the investigation was incomplete and had been mishandled. We agree with this and we find that the fault lies mainly with the Deputy Chief Constable.

Secondly, during the inquiry it was established that the Deputy Chief Constable held "off the record" discussions with the Matsqui officers who were involved with the Fullerton complaint. Mr. Sorochan commented that it was inconceivable for a superior officer of a police department to hold "off the record" discussions with persons who are suspects and under investigation. The Commission agrees.

Thirdly, this report would be incomplete if the matter of Deputy Chief Vander Hoek's initial response to appear before this Commission was not noted. When advised of our hearings and requested to appear, the Deputy Chief replied that he knew nothing of the Fullertons' incident and had been on holidays at that time in 1985. This was not so, and this unprofessional response indicated at the least that the Deputy Chief did not take this process seriously. As a person in a senior leadership role with the Matsqui Police

Department, we expect the Deputy Chief to offer a higher example of professionalism and leadership to the members of his police force than he displayed to us.

To conclude, it is the opinion of this Commission that Deputy Chief Vander Hoek exercised a significant role in the investigation and disposition of Mr. and Mrs. Fullertons' allegations and in doing so committed errors of judgement.

PART 3

SUMMARY OF MAIN CONCLUSIONS

3.1 With respect to the procedural aspects of the Matsqui Police Department's handling of the Fullertons' complaints, we find two fundamental errors.

(1) The first error occurred when Deputy Chief Constable Vander Hoek ordered that the criminal investigation of allegations of assault against Mr. and Mrs. Fullerton by members of the Matsqui Police Department be stopped without satisfying himself that the investigation was complete or that the investigator knew of further information and additional interviews to be conducted. This unprecedented and unjustified move resulted in an error that was relied upon at least three times when the resulting flawed investigation report was considered; by local Crown Counsel when asked to advise on whether the evidence justified criminal charges against members of the Matsqui Police Department; by Chief Constable Stewart when making his decision under section 39(1) of the Police Act that the civilian complaint of Mr. and Mrs. Fullerton was vexatious and not made in good faith; and when the Chief's decision was reviewed by a panel of the Matsqui Police Board.

(2) The second error arose when the Matsqui Police Department failed to recognize the distinction between the Mr. Fullertons' allegation of criminal assault at the gravel pit and the broader citizen complaints against the Department.

The evidence before us is that the citizen complaints included, but were not limited to, the assault allegations. The evidence also indicates that the Chief Constable simply took the criminal investigation report on the alleged assault and assumed, without fully considering the matter, that it covered the citizen complaints. It did not. Elements of the Fullertons' allegations such as rough treatment at the jail, improper medical treatment and lack of a breathalyzer test do not appear to have been considered by the Chief Constable.

As with the stoppage of the criminal investigation, this error, too, was reflected when a panel of the Matsqui Police Board considered Mr. Fullerton's request for a review.

3.2 It is the Commission's view that our comments in conclusion 3.1 above with respect to Deputy Chief Constable Vander Hoek and the other comments that have been made in this report concerning his actions and involvement in this matter should be reviewed by the appropriate disciplinary authority within the Matsqui Police Department to determine whether any action should be instituted.

3.3 As mentioned earlier in this report, on May 26, 1989, this Commission ruled that no useful public purpose nor any legitimate interest of Mr. and Mr. Fullerton would be served by rehearing all or any of the evidence presented at the jury trial relating to the allegations of Robert and Francine Fullerton of assault. The Commission is aware, however, of the various investigations, reviews and analysis that have been brought to bear on the substance of the complaints of Mr. and Mrs. Fullerton against the actions of the Matsqui Police Department on July 15, 1985.

In this respect, we point in particular to the review of the facts of this case by senior Crown Counsel of the Ministry of Attorney General in 1987 who concluded that there was no basis for charges against members of the Matsqui Police Department.

We point also to the civil jury trial which rejected the assault claims of Mr. and Mrs. Fullerton against members of the Matsqui Police Department. Both the review by senior Crown Counsel and the civil jury trial had before them all the evidence that Mr. and Mr. Fullerton wished to produce, including the evidence that they unearthed after the investigation had been stopped and which had not been originally considered by the Chief Constable or the Matsqui Police Board.

We have also had the opportunity during this hearing and our review of the evidence to consider Mr. Fullerton's complaints about being denied at the Matsqui Police Jail proper medical treatment, a breathalyzer test and access to legal counsel.

It is the Commission's conclusion that these complaints have now been fully and justly aired, both substantially insofar as procedures under the Police Act or consideration of criminal charges are concerned. Notwithstanding that Mr. and Mrs. Fullerton may not agree with the conclusions on the substance of their claims, the Commission feels that they have been properly rejected and that no further consideration of the complaints or the allegations involved is warranted.

3.4 At the conclusion of our hearings, this Commission was urged to consider recommending some financial compensation for the Fullertons in consideration of their time, effort and expense of pursuing their allegations. While having some understanding of the Fullertons' position in this respect, we feel in the circumstances a recommendation for compensation is inappropriate.

Mr. and Mrs. Fullerton have been ably represented at the hearings before this Commission and have not been required to assume any financial obligations for this representation.

But more significant would be the precedent that would be established by recommending compensation. The Fullertons have pursued every possible avenue of review of their complaints. They have chosen to do so. The substance of their complaints has not been substantiated. To compensate the Fullertons in such circumstances would justify compensation of virtually all complaints against municipal police departments, not to mention those whose complaints prove justified.

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

SCHEDULE "A"

Order in Council No 118, Approved and Ordered FEB -2 1989

Lieutenant Governor

Executive Council Chambers, Victoria FEB -1 1989

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

1. A Commission be issued appointing J. David N. Edgar, Chairman of the British Columbia Police Commission, and Mary E. Saunders and Audrey L. Moore, both members of that Commission, to be commissioners under Part 2 of the *Inquiry Act*, to enquire into and report on all matters associated with alleged improper treatment of Robert or Francine Fullerton by members of the Mataqui police force on or about July 15, 1985 beginning at a local gravel pit and continuing at the Mataqui Police Station; And upon the internal police inquiry, investigations and hearings following complaint by Robert and Francine Fullerton. In particular, the Commission under Part 2 is directed to enquire, investigate and report on
   (a) all factors surrounding the action of members of the Mataqui police force in relation to Robert and Francine Fullerton on or about July 15, 1985,
   (b) whether Robert or Francine Fullerton sustained injuries while detained in police custody and, if so, the extent of these injuries, the persons who inflicted them, the reasons for so inflicting them and the time and place the injuries were sustained,
   (c) whether any member or staff of the Mataqui police force or any other person contributed to, or had or acquired knowledge of, the injuries to Robert or Francine Fullerton and, if so, who were they, and where and to what extent did each contribute to the injuries, or have or acquire such knowledge,
   (d) whether any police officer who had knowledge of the perpetration of an assault (if one occurred) on Robert or Francine Fullerton took steps to protect him or her from injury and, if not, why not, and
   (e) all records of internal disciplinary investigations, legal proceedings and other enquiries which took place as a consequence of complaints by Robert or Francine Fullerton under the *Police Act*

2. To assist in achieving the objects of the said enquiry, the Commission under Part 2 shall provide that
   (a) the Attorney General appoint counsel to the commissioners,
   (b) the commissioners as well as counsel appointed under paragraph (a) have full powers to examine and cross-examine any person giving evidence at the enquiry, and
   (c) without limiting or restricting the rights and powers conferred on them by law, the commissioners may
      (i) make orders temporarily banning the publication of evidence received during hearings for such period as the commissioners consider necessary to make accurate findings of fact on all evidence taken, and
      (ii) exclude persons attending the enquiry as witnesses from hearing evidence tendered by others, with right to make orders on witnesses respecting non-disclosure of evidence tendered or to be tendered on conditions and during such period as may be set out in the order.

Attorney General

Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: Inquiry Act, s. 8

Other (specify):

January 26, 1989

/72/89/13/jb

SCHEDULE "B"

INTRODUCTION

THIS BINDER CONTAINS THE LAW, POLICY AND GUIDELINES
OF THE MATSQUI POLICE DEPARTMENT
FOR HANDLING CITIZENS' COMPLAINTS.

IT IS FOR THE PRIMARY USE OF THE SHIFT COMMANDERS,
DISCIPLINARY AUTHORITY AND
INVESTIGATING OFFICER.

N. B. Daniel
Chief Constable

EXHIBIT TAG

PROVINCIAL COURT

CASE NO. FULLERTON INQUIRY

MARKED	ENTERED
68	

EXHIBIT CARD No. _____ EXHIBIT No. _____

SUBMITTED BY:

PROSECUTION/PLAINTIFF

DEFENCE/RESPONDENT

9 PAGES

CLERK ACKNOWLEDGMENT _____ DATE

FORM ADM-051

CITIZEN COMPLAINTS

Reference	Tab
Police Act	1
Police (Discipline) Regulations	2
Part I. B. 5. of Policy/Procedure Manual	3
Form 9 and 10	4
Citizen Complaint Checklist	5
Police Act Investigation Outline	6
Case Law	7

Distribution

Binder #1 - Chief Cst. N. B. Daniel
#2 - D/Chief Cst. E. Vander Hoek
#3 - Inspector N. E. Heppner
#4 - Shift Commanders' Office
#5 - G.I.S. Commander

CITIZEN COMPLAINT CHECKLIST

Ref.: Part 9 - B. C. Police Act
Part 3 - B. C. Police Act (Discipline) Regulations
Part I.B.5. of Matsqui Police Department Procedure Manual

PROCESS	DATE
A. Citizen files complaint against M.P.D. member(s)	_____
B. Shift Commander/Manager Operations	
1) Interviews complainant	_____
2) Records complaint on Form 9 and furnishes the complainant with a copy of Form 9 & 10 immediately.	_____
3) Forwards Form 9 to Disciplinary Authority	_____
C. Disciplinary Authority	
1. Form 9 Forwarded to Complaints Commissioner	_____
2. Informal disposition of Complaint	
a) Attempt made to resolve complaint	_____
b) Record made of manner in which complt. resolved	_____
c) Complainant, Constable, Complaint Commissioner notified of results.	_____
Exception:	
The Disciplinary Authority may decide to investigate complaint even though complainant is satisfied.	
3. Investigation of Complaint.	
a) No attempt made to resolve informally and investigator appointed.	_____
b) Informal resolution unsuccessful and complainant requests investigation. The Constable & Complaint Commissioner notified.	_____

DATE

4. Status Reports to Complainant, Constable and Complaint Commissioner.

   a) In writing within 45 days after date complaint recorded. _____

   b) Every 30 days thereafter. _____

5. Frivolous & Vexatious Complaints.

   a) Disciplinary Authority refuses to investigate or further investigate. _____

   b) Complainant, Constable, Complaint Commissioner notified. _____

6. Investigation Completed. _____

   a) Regional Crown consulted. _____

7. Notice of Results of Investigation.

   a) Within 7 days notify the complainant, Constable and Complaint Commissioner. _____

89-08-08

POLICE ACT INVESTIGATION OUTLINE

1. Review **CITIZEN COMPLAINT FORM** (FORM 9) and other attached reports.

   - complaint must be <u>in writing</u> and must be against <u>conduct</u>, not against <u>service</u> (POLICE ACT, PART 9 - CITIZEN COMPLAINT PROCEDURE, SECTION 49 - INTERPRETATION "COMPLAINT").

2. Review the duties of the investigating officer under **SECTION 10** and **SECTION 11** of the **POLICE ACT DISCIPLINE REGULATIONS**.

3. Determine the following:

   (a) Complainant's expectations.

   (b) Direction of investigation:

   (i) Criminal, and/or
   (ii) Conduct

4. Gather **ALL** related reports and documentation.

   (a) Dispatch Ticket.
   (b) Occurrence/Continuation Report.
   (c) Report to Crown Counsel.
   (d) Prisoner Record (Booking sheet).
   (e) Jail Log and Guard Log.
   (f) Citizen Complaint Form (FORM 9).
   (g) Communication Center Recording.
   (h) Photographs - mug shots, injuries, scene, etc.
   (i) Medical Reports, if available.
   (j) Dispatch Control Log.
   (k) Trial Transcript, if applicable.
   (l) Obtain Legal Opinion as required.

5. Arrange file in **CHRONOLOGICAL** order.

6. Set up a **WITNESS LOG** and a **INVESTIGATION CHRONOLOGY LOG** (Record DATE and TIME of all contacts).

   NOTE: It is important to record all investigative transactions i.e. phone calls, interview attempts, cancellations, delays, etc.

7. Set up **WITNESS** interviews. **ALL** statements should be taken <u>in writing</u>.

8. Collect **STATEMENTS, DUTY REPORTS,** and **OTHER EVIDENCE**.

9. Interview **ACCUSED** member. Complete **CRIMINAL** investigation **BEFORE** service of **FORM 2** (**POLICE ACT DISCIPLINE REGULATIONS, SECTION 10(2)**)

10. Submit a **REPORT TO CROWN COUNSEL** on **ALL** criminal investigations for review by Regional Crown Counsel.

11. Complete a detailed **INVESTIGATION REPORT** with recommendation to the Chief Constable or delegated discipline authority (As per **SECTION 11** of the **POLICE ACT DISCIPLINE REGULATIONS**).

12. Ensure that the investigation complys with the **TIME LIMITATIONS** for alleged disciplinary defaults, as per **SECTION 34** of the **POLICE ACT DISCIPLINE REGULATIONS**.

5. CITIZEN COMPLAINTS

This policy deals with a citizen's complaint as outlined in Part 9 of the Police Act.

(a) Members of the public have the right to question and complain about the actions of the police appointed or employed under the Act while in the performance of any duty or function under the Act.

The following policy/procedures are designed to:

(i) Assist members and supervisors when they are confronted by a citizen wishing to complain, and

(ii) Comply with the various provisions of the Police Act as it pertains to complaints against the Police.

(b) In all cases where a member of the public wishes to file a complaint against a police officer, the member to whom it is reported shall immediately refer the complaint to the Senior Constable on duty at the time the complaint is made.

(c) The Senior Constable, for the purpose of receiving complaints, is the Shift Commander or the Manager of Operations on duty at the time the complaint is made.

(d) The Shift Commander or Manager of Operations shall interview the complainant and determine whether the complaint is one respecting the conduct of a member which, if proven, would constitute a disciplinary default under a code of conduct established by regulation.

(e) The Shift Commander or Manager of Operations shall record the complaint and provide the complainant with a copy of the Citizen Complaint Procedure (Form 10) together with a copy of a Citizen Complaint Form (Form 9).

(f) The Citizen Complaint Form will not be completed for minor complaints that are of a service nature and resolved by the complainant and the Shift Commander.

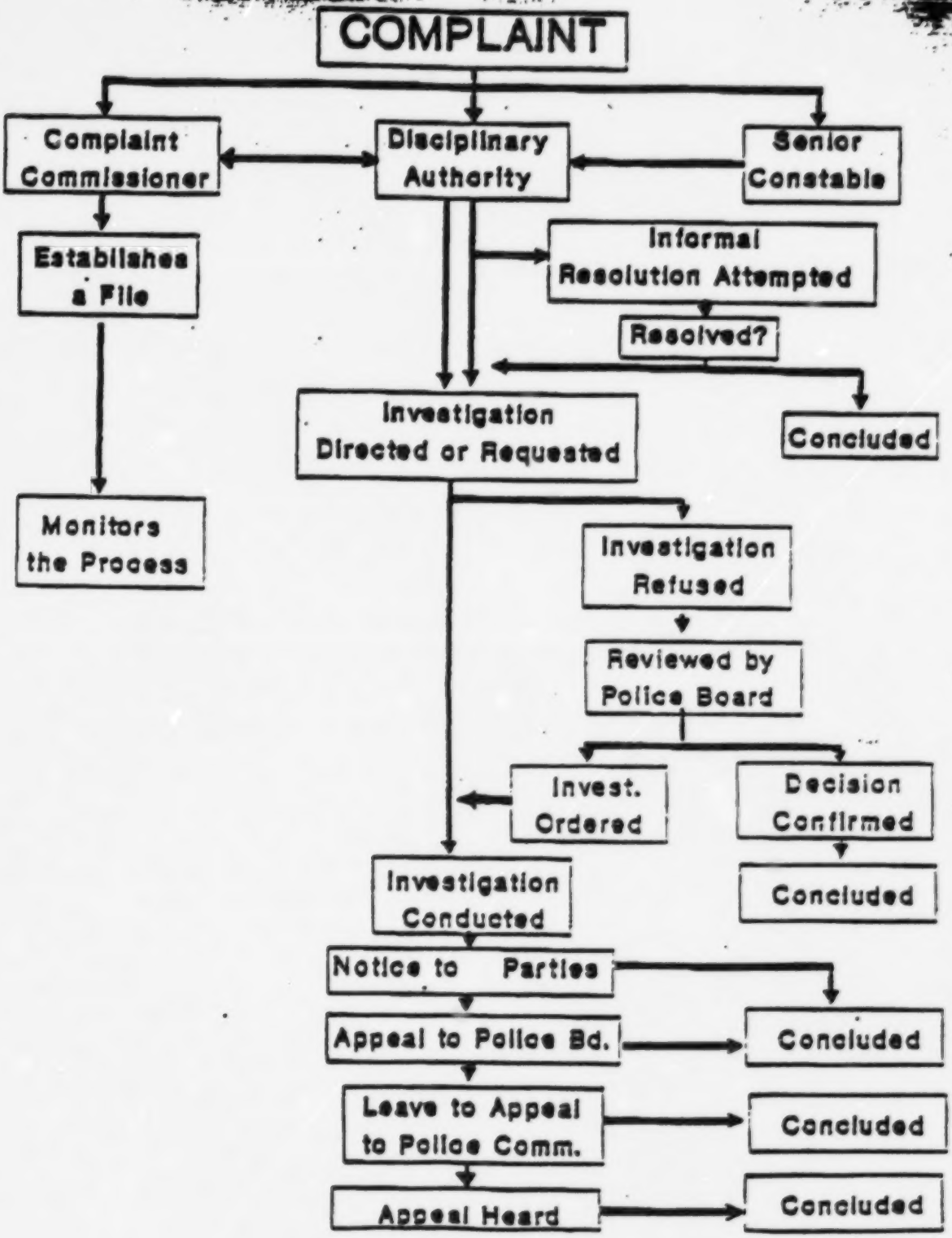
(g) A copy of Form 9 shall be forwarded to the Disciplinary Authority. The Disciplinary Authority shall forthwith send a copy of it to the Complaint Commission. The Disciplinary Authority for the Matsqui Police Department is the Chief Constable, or his designate, who upon receiving the complaint, may informally hear and attempt to resolve the complaint.

(h) When the complaint is resolved informally by the Disciplinary Authority, the complainant, the constable complained against and the Complaint Commissioner shall be notified of the results of the attempt at informal resolution.

(i) Citizen complaints that are not resolved informally shall be investigated by the G.I.S. Commander or his delegate, unless otherwise directed by the Chief Constable.

(j) Informal resolution will not be undertaken if criminal allegations are reason of complaint.

(k) Criminal investigations respecting members shall be referred to Regional Crown Counsel for decision.


COMPLAINT
Complaint Commissioner
Disciplinary Authority
Senior Constable
Establishes a File
Informal Resolution Attempted
Resolved?
Investigation Directed or Requested
Concluded
Monitors the Process
Investigation Refused
Reviewed by Police Board
Invest. Ordered
Decision Confirmed
Concluded
Investigation Conducted
Notice to Parties
Appeal to Police Bd.
Concluded
Leave to Appeal to Police Comm.
Concluded
Appeal Heard
Concluded

APPENDIX "A"

PROPOSED GUIDELINES ON APPLYING SECTION 58(1) OF THE *POLICE ACT* "FRIVOLOUS AND VEXATIOUS COMPLAINTS"

Purpose:

In applying section 58(1) of the *Police Act*, disciplinary authorities have the discretion to refuse to investigate or to investigate further a complaint made against a constable if it is satisfied that one of three conditions apply. The purpose of this guideline is to provide guidance to disciplinary authorities in interpreting and applying the three conditions set out in section 58(1).

Conditions:

Any one or all of the following conditions must be satisfied before a disciplinary authority would be justified in refusing to investigate a complaint or to further investigate a complaint. The following conditions are set out in the reverse order from the sequence they appear in the Act.

(1) SIX-MONTH LIMITATION PERIOD

Under clause 58(1)(c), a complainant must have initiated his complaint before the end of the sixth month from the date that he or she knew or ought to have known of the alleged act or omission of the constable.

While the verb "knew" is clear, applying the phrase "ought to have known" requires the exercise of judgment. In addressing this phrasing, the question can be asked:

> Was it reasonable in the circumstances of this complaint, taking into consideration the nature of the alleged act or omission, the mental, physical and emotional state of the complainant, and other relevant circumstances, for the complaint to have known of the alleged act or omission on the date that it in fact occurred?

If it would have been reasonable for the complainant to have known of the alleged act or omission which occurred on the date in question, but the complainant failed to initiate a complaint within six months from that date, the disciplinary authority is justified in refusing to proceed, as per the wording of clause 58(1)(c).

(2) CONDUCT PRIMARILY AFFECTED SOMEONE OTHER THAN THE COMPLAINANT

Under clause 58(1)(b), a complaint must be initiated by a person who was primarily affected by the alleged improper conduct. There is a further requirement that the person

primarily affected also have a sufficient personal interest in the subject matter of the complaint.

If a complainant was not primarily affected by the alleged improper conduct, then this forms a basis to refuse to proceed with an investigation. For example, if a person witnessed what they felt was improper police conduct of a person being arrested, that witness could not initiate a complaint as he or she was not primarily affected by the alleged improper conduct. Only the person being arrested could complain.

There is an additional requirement regarding "sufficient personal interest". It is hard to imagine a circumstance where someone who was primarily affected did not also have a personal interest, so this phrasing does not appear to provide a further refinement to the important criteria of being "primarily affected".

However, it should be noted that the legal guardian of a minor, or a person who is incapacitated, while not themselves directly affected, should be able to initiate a complaint on behalf of the minor or incapacitated person who was primarily affected by the alleged improper conduct. For example if a parent (or legal guardian) of a young teenage boy initiates a complaint on behalf of his or her son, that complaint should not be rejected out of hand simply because the parent (or guardian) was not the person who was primarily affected. However, that parent (or guardian) should make it clear that he or she is making the complaint as the parent (or guardian) of a minor and, if it is considered appropriate to challenge their claim, that person should also be able to prove that assertion.

If a lawyer is initiating a complaint on behalf of a person who was primarily affected, this complaint should be considered as if made by the person himself.

(3) FRIVOLOUS OR VEXATIOUS COMPLAINT

The full phrasing of clause 58(1)(a) is "frivolous, vexatious, not made in good faith or concerns a trivial matter". A consideration of this clause has been placed last on this guideline because, as you might expect, it is the most difficult one to interpret and apply.

While it appears to contain four elements, this phrase in fact contains only two. Fortunately, only one of those two elements will be of primary concern in applying this clause.

When applying this clause, the focus should be determining whether or not a complaint raises an issue which should be heard. The phrases "vexatious" and "not made in good faith" are also used in this clause, but it will not be necessary to concentrate too much on these words. In the majority of cases, it will not be necessary to determine whether a person is making his complaint under questionable motives. More often than not, if a person is asserting a claim in bad faith, that claim will also lack substance and can be rejected solely on the basis that it fails to raise a substantive issue or a plausible complaint. This matter, however, deserves further discussion.

In determining whether a complaint raises a substantive issue or a plausible complaint, it is best to err on the side of caution and not reject a complaint simply because there is some obscurity in the facts. A complaint should only be rejected if it is clear that there is no plausible complaint which ought to be heard or issue which needs to be considered.

As a matter procedure, one should first assume that all the facts as set out in the complaint are true. The question then becomes: Do those facts disclose a complaint or issue which needs to be considered further? Yhe complaint should only be rejected if it is clear that there is no disclosure of a complaint or issue.

An example would be useful at this point.

A complaint has been submitted by a man with a grade 4 education. He has written what happened to him when he was being arrested. He was drunk at the time and, if judging from his command of the English language in his complaint, he probably peppered his conversations with the arresting officers with a healthy dose of obscenities. He has difficulty framing his complaint and setting out the facts in a chronological order.

Nonetheless, amongst his apparent jibberish, he says one thing which may substantiate a complaint: "The doc saw me afterwards and told me only a #$@*! punch in the jaw could have broken my teeth." While the rest of his story sounds like so many other sad and disjointed tales of alcoholic dementia, this one comment appears to substantiate his claim that an officer abused him when he was being arrested.

His complaint should not be rejected out of hand at this stage, but some further investigation would be required to determine whether his complaint is justified. Finding out if the complainant saw a physician and talking to that physician is one path which suggests itself. Determining whether the officer acted in self-defence is another.

As a final comment, if a complaint contains a combination of irrelevant or immaterial facts and facts which are relevant and material, then the whole complaint should not be rejected. Rather it is recommended that the irrelevant facts be deleted from the complaint and the substantive matters be addressed in due process.

Finally, there are a set of specific circumstances which will likely fall under clause 58(1)(a). For the most part, the following complaints can be rejected out of hand without much further investigation.

(4) Duplicity

The formal concept of duplicity in criminal or civil pleadings has no application to *Police Act* complaints. However, if a complainant has raised the complaint before other tribunals, there may be an issue as to whether the *Police Act* proceedings are brought in good faith. Also, a complaint cannot be rejected because the actions complained of are the subject of civil or criminal action. The complainant need not "pick a remedy". Civil, criminal and complaint proceedings on the same set of facts may be completely appropriate.

(5) *Res Judicata*

As with the legal principle, if the specific subject matter of the complaint have already been addressed in either a past trial or a past complaint, then that complaint could be rejected on this basis. However, the complaint would have to involve the same person, the same officer, the same day, the same or substantially the same allegations, and so on. It should also be noted that the same acts may not constitute a crime or a civil wrong (tort) but may still be violations of the *Police Discipline Code* and, therefore, the valid subject of a complaint.

(6) Jurisdiction

If someone complains about an officer who is not employed by the police force which received the complaint, the complainant should be so informed and provided with the name of the appropriate force.

(7) Academic Questions

If someone makes a complaint which raises what can best be described as "academic questions", this is also a ground to refuse to proceeding further. An academic question would be one which is based upon hypothetical or assumed facts and such facts are fundamental to sustaining the complaint. It is difficult to envisage how such a complaint could arise under the *Police Act* but complaints relating to issues of policy or administration may come under this category since they may only incidentally relate to the specific officer complained against.

SUMMARY

If after reviewing these guidelines you have any further concerns regarding a complaint and whether to accept or reject it, please consult counsel.